IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Defective A.O. No. 136 of 2004

Sri Rajendra Prasad,
S/o Late Sri Ayodhya Prasad,
R/o Nai Basti, Kathgodam,
District Nainital. ……. Appellant

Versus

1. Sri Satyapal Singh S/o Amar Singh,
   R/o Indra Colony, Kashipur,
   District Udham Singh Nagar.
2. Oriental Insurance Company Ltd.,
   Through its Divisional Manager,
   Divisional Office, Nainital Road,
   Haldwani, District Nainital.
3. United India Insurance Company Ltd.,
   through its Divisional Manager,
   Divisional Office Tikonia,
   Haldwani, District Nainital. ……. Respondents

Mr. R.S. Sammal, Advocate for the appellant.
Mr. Lalit Sharma, Advocate for respondent No. 1.
Mr. K.K. Shah, Advocate for respondent No. 2.

JUDGMENT

Coram: Hon. Rajeev Gupta, C.J.
Hon. M.M. Ghildiyal, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. R.S. Sammal, Advocate for the appellant.

Mr. Lalit Sharma, Advocate for respondent No. 1. Mr. K.K. Shah, Advocate for respondent No. 2 Oriental Insurance Company Ltd. None for the third respondent United India Insurance Company Ltd.

2. On due consideration, the petition filed under Section 5 of the Limitation Act is allowed and the delay in filing the appeal is, hereby condoned.

3. With the consent of the learned counsel for the parties, the appeal is finally heard.

4. Appellant Rajendra Prasad is seeking enhancement of the compensation awarded by Motor Accident Claims Tribunal / District Judge, Nainital vide Award dated 10.08.2004 passed in Motor Accident Claim Case No. 18 of 2003.

5. Claimant Rajendra Prasad claimed compensation of Rs. 6,00,000/- for the injuries sustained by him in the motor accident on 07.09.2002 when his scooter bearing registration No. U.P.02/B-3970 was dashed by offending vehicle Maruti Van bearing registration No. U.P.04/0356 owned by first respondent Satypal Singh and driven by his driver Santosh Pandey and insured with second respondent Oriental Insurance Company Ltd.

6. The owner and the insurer of the offending vehicle Maruti Van contested the claim and denied their liability to pay compensation to the claimant. The Insurance Company even disputed the accident itself.

7. The Tribunal, on the evidence led by the parties, held that claimant Rajendra Prasad sustained multiple injuries in the accident; the accident occurred due to rash and negligent driving of the driver of the offending vehicle Maruti Van; and that the insurer of the offending vehicle Maruti Van was liable to pay compensation to the claimant. Considering the evidence led by the claimant in regard to the injuries suffered by him and the amount spent on treatment, the Tribunal awarded sum of Rs. 44,430/- towards medical expenses and a further sum of Rs. 5,000/- for physical pain and mental sufferings. Thus, a total sum of Rs. 49,430/- was awarded as compensation to the claimant for the injuries suffered by him in the accident with interest at the rate of 9% per annum from the date of the claim petition.

8. Mr. R.S. Sammal, the learned counsel for the appellant submits that the compensation of Rs. 49,430/- granted by the Tribunal is too low in comparison to the serious nature of the injuries suffered by the appellant in the accident.

9. Mr. K.K. Shah, learned counsel for respondent No. 2 Oriental Insurance Company Ltd., the insurer of the offending vehicle Maruti Van, on the other hand, supports the award and submits that the Tribunal has been too liberal in awarding substantial compensation of Rs. 49,430/- for the simple injuries suffered by the appellant in the accident.

10. Mr. Lalit Sharma, leanred counsel for respondent No. 1, the owner of the offending vehicle Maruti Van, also supported the award.

11. The findings recorded by the Tribunal that claimant Rajendra Prasad sustained injuries in the accident and that the accident occurred due to rash and negligent driving of the driver of the offending vehicle Maruti Van and the insurer of the offending vehicle Maruti Van was liable to pay compensation to the claimant, have now attained finality as none of the respondents have filed any appeal against the award.

12. Considering the injuries sustained by the appellant in the accident and the amount of sufferings – physical and mental – the appellant must have suffered on account of the injuries and the dislocation of his business of photography during that period, we are of the opinion that the amount of Rs. 5,000/- awarded by the Tribunal towards pain and suffering is too low. In our opinion, a lump sum of Rs. 60,000/- would be just and proper compensation to the claimant for the injuries suffered by him in the accident and the amount spent on treatment.

13. The appeal filed by the appellant under Section 173 of the Motor Vehicles Act, therefore, is allowed in part. The compensation of Rs. 49,430/- awarded by the Tribunal is enhanced to Rs. 60,000/-. The enhanced amount shall bear interest at the rate of 6% per annum from the date of the application. No order as to costs.

(M.M. Ghildiyal, J.) **(Rajeev Gupta, C.J.)**
22.02.2006 **22.02.2006**

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